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NO. 83-5792

IN THE
UNITED STATES SUPREME COURT
OCTOBER TERM 1983

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FEB 17 PAGE 31

JEFFREY LEE GRIFFIN, PETITIONER

VS.

THE STATE OF TEXAS, RESPONDENT

PETITIONER'S RESPONSE TO RESPONDENT'S BRIEF IN
OPPOSITION TO PETITION FOR WRIT OF CERTIORARI
TO THE TEXAS COURT OF CRIMINAL APPEALS

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INDEX

LIST OF AUTHORITIES	i
QUESTION PRESENTED	2
CONCLUSION	5

LIST OF AUTHORITIES

<u>Oregon v. Bradshaw,</u>		
U.S. ___,	103, S.Ct.	2830
L.Ed.2d ___,	(1983)
		5

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TO THE HONORABLE JUDGES OF THE SUPREME COURT
OF THE UNITED STATES:

NOW COMES, JEFFREY LEE GRIFFIN, Petitioner, in the above
entitled and numbered cause and by and through his attorney,
STANLEY G. SCHNEIDER, and moves that he be permitted to file the
attached Petitioner's Response to Respondent's Brief in
Opposition to Petition for Writ of Certiorari to the Texas Court
of Criminal Appeals.

QUESTION PRESENTED

WHETHER PETITIONER INITIATED COMMUNICATION WITH THE POLICE AND KNOWINGLY AND INTELLIGENTLY WAIVED HIS FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHT TO COUNSEL AFTER REQUESTING ASSISTANCE OF SPECIFIC COUNSEL.

THE STATE OF TEXAS HAS INTENTIONALLY MISREPRESENTED THE FACTS OF PETITIONER'S CASE AS WELL AS THE LEGAL BASIS FOR THE TEXAS COURT OF CRIMINAL APPEALS' OPINION

(A) In Respondent's Brief in Opposition to Petition for Writ of Certiorari to the Texas Court of Criminal Appeals the State intentionally misrepresented the facts of the case surrounding Petitioner's request for counsel and Detective Kent's subsequent interrogation of Petitioner. The State unequivocably and intentionally misstated the facts of Petitioner's case by asserting:

"... a few minutes later, Petitioner received a call from Mr. Jennings, who declined to represent him. (SF 3572-73, 3655-56, 4284, 4365-66). He advised the officers of Mr. Jennings' decision. (SF 3573). The officers then asked Petitioner if he wanted another attorney. Petitioner stated that he did not. (SF 3573, 3656, 4284, 4367). The officers explained to Petitioner his right to appointed counsel, to which Petitioner again responded that he did not want any attorney. (SF 3573, 3656, 4384). Questioning then resumed.

At approximately 3:45 p.m. Detective Kent, the officer to whom Petitioner had given a witness statement on an unrelated case in July of 1978, entered the interview room. (SF 3574, 4285, 4367). Petitioner immediately recognized Detective Kent, responding in a friendly manner. (SF 3445-46, 4368, 4422, 4473). After observing Petitioner and the other officers in the interview room for a short period of time, (SF 3444-46, 4421), Detective Kent requested to speak to Petitioner alone. (SF 3444-46, 3500-01, 3574, 4285, 4368, 4421). Petitioner responded that he wanted to speak to Detective Kent alone. (SF 4285). Once again, Petitioner was informed of his constitutional right, which Petitioner expressly waived. (SF 3445, 4425). Questioning ensued. (SF 3451-52). (Emphasis added).

The record and the Opinion by the Texas Court of Criminal Appeals, however, reflects that the State's assertions are false and misleading. In the Opinion of the Texas Court of Criminal Appeals the testimony of Officer Bostock during the hearing on the Motion to Suppress was set forth as follows:

"A. We talked about the previous statement and some of his background, some of his way of life and so forth, where he lived, about the investigation itself, and then about 3:00 o'clock that afternoon, he looked at us and said, 'I think I want to talk to my lawyer'.

O. What did you do then?

A. I asked him who his attorney was and he said it was Mr. Jennings.

I pulled out a telephone book, looked up the number, dialed the number, gave him the telephone.

O. Is that Tom Jennings?

A. I believe that's his first name, yes, sir.

O. Is that the person you dialed, in any event?

A. Yes sir. I called his office at which time I gave Mr. Griffin the telephone, and Detective Schultz and I stepped out of the office.

O. What happened then?

A. He talked on the telephone, sir. We didn't listen to the conversation. We left the door open where we could observe him, but we did not listen to the conversation.

O. How long did the conversation take place?

A. Roughly between five and ten minutes, I believe, sir.

O. This would have been sometime after 3:00 o'clock, between 3:00 o'clock --

A. It was right around 3:00 o'clock when he stated that he would like to talk to his lawyer, that he had better talk to his lawyer, and then, after he hung up, we returned in there, and he advised us that he had, in fact, talked to his attorney, and about 3:30, his attorney called back and asked to talk to him.

Again, we put him on the telephone and we left the office.

O. Between 3:00 and 3:30, did you talk to him about the case?

A. We talked to Mr. Griffin mostly, I think, about what his attorney was advising

him.

O. Okay. Then, at 3:30, Mr. Tom Jennings again called the Homicide Office?

A. Well, Detective Schultz was advised that Mr. Jennings was on the telephone, and then Detective Schultz came back into the interview room and told Mr. Griffin that his attorney wanted to talk to him.

We again left the interview room and allowed him to talk to Mr. Jennings on the telephone.

O. How long did that conversation take?

A. Just a short conversation, just a minute or two, I believe.

O. What happened after he hung up?

A. We re-entered the interview room and asked him what had happened, and he said Mr. Jennings had told him he was not going to represent him.

O. Did you ask him then whether he wanted a lawyer?

A. Yes, sir. We asked him if he wanted to call another lawyer.

O. What did he say?

A. He said: No. He just didn't want to talk to any lawyers right now.

O. Who was present when this was said?

A. Detective Schultz and I believe Detective Kent had come in by that time, and I don't recall if there was anybody else actually in the room then, sir.

O. But, in any event, he said he didn't want any lawyer?

A. He said he didn't want any other lawyer now.

O. Then what happened?

A. Detective Kent asked me if -- When Detective Kent came into the room, he was behind me, and Mr. Griffin smiled at him.

Detective Kent asked me if I would have any objections if he interview him, and I stated: No, and I leaned over and told Detective Schultz that Detective Kent wished to interview him, and Detective Schultz and I stepped out of the room, sir." Jeffrey Lee Griffin v. State of Texas, majority opinion, at 11-13, (Emphasis added).

Based on the aforementioned facts, it is clear that Petitioner did not waive his right to counsel by stating he did not wish to talk to any attorney as the State has argued.

Rather, after being rejected by his lawyer, Mr. Jennings, Petitioner stated that he did not want to talk to any lawyers right now. Petitioner asserts that this does not demonstrate a knowing and intelligent waiver of counsel, nor do the facts indicate that Petitioner "initiated" the conversation with Detective Kent which resulted in his confession.

(B) The State has also created a false impression that the Texas Court of Criminal Appeals relied on this Court's recent decision in Oregon v. Bradshaw, ____ U.S.____, 103, S.Ct. 2830, L.Ed. 2d. ____ (1983), in affirming Petitioner's conviction. The Texas Court of Criminal Appeals denied Petitioners case on May 25, 1983, while Oregon v. Bradshaw, supra, was not decided by this Court until June 23, 1983. Petitioner has requested that this Court remand this case to the Texas Court of Criminal Appeals, in order that the Court may determine whether Petitioner did "initiate" the police contact which resulted in his confession and whether he knowingly and intelligently waived his right to counsel in light of the State's recent decision in Oregon v. Bradshaw, supra. In Oregon v. Bradshaw, supra, Justice Rehnquist stated:

"But even if a conversation taking place after the accused has expressed his desire to deal with the police only through counsel, is initiated by the accused where reinterrogation follows, the burden remains upon the prosecution to show that subsequent events indicated a waiver of the Fifth Amendment right to have counsel present during the interrogation." 103 S.Ct. at 2834.

CONCLUSION

Therefore, Petitioner asserts that Justice Rehnquist's affirmative statement mandates that this Court consider whether Detective Kent initiated the conversation with Petitioner which resulted in his confession and whether Petitioner knowingly and intelligently waived his right to counsel.

Respectfully submitted,



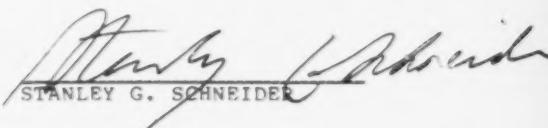
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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing was mailed to David R. Richards, Executive Assistant, Attorney General of the State of Texas, P. O. Box 12548, Capitol Station, Austin, Texas 78711, on this the 3rd day of February, 1984.



STANLEY G. SCHNEIDER